vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6117 OF 2007

Shri Rajnikant Ramakant Bedagkar ... Petitioner

V/s.

Chandrakant Baburao Kolekar & Ors. ... Respondents

Mr.R.P. Walvekar for Petitioner
Mr.Amit Borkar for Respondent No.3

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 6, 2007**

P.C.:

. The grievance of the petitioner is that the III Joint Civil Judge, Senior Division, Kolhapur has passed the impugned order dated 20.3.2007 below exhibit 155 in RCS Suit No.860 of 2005 without hearing the petitioner. Exhibit 155 was an application made by the respondent-defendants seeking issuance of a witness summons before the JMFC, Kolhapur. After the petitioner learnt that the application had been allowed, the petitioner filed an application on 3.4.2007 praying that the documents should not be called for from the criminal Court. This application was rejected on 3.7.2007 by the trial Court after hearing both the parties.

2. It is contended by the petitioner that the application at exhibit 155 was allowed without hearing the petitioner. Mr.Borkar appearing for the respondent

does not deny this factual aspect of the matter. It is a fundamental principle that when the Court passed an order on an application it must do so after hearing both the parties unless one of the parties is recalcitrant and does not continuously attend the Court. Such is not a position in this case. Hence, the impugned orders below exhibits 155 and 161 are set aside. The trial Court will decide the application contained in exhibit 155 afresh after hearing both the parties. Petition is disposed of.